

**THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE S.ANANDA REDDY**

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THURSDAY, THIS THE FIFTH DAY OF JULY,
TWO THOUSAND AND SEVEN
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WRIT PETITION No.13448 of 2006

Between:

The Rajamahendri Outdoor Advertisers Association,
Rajahmundry, represented by its President
Mr. Sathi Srijnivas Reddy.

...Petitioner

And

Rajahmundry Municipal Corporation, Rajahmundry
Represented by its Commissioner and another

...Respondents

**THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE S.ANANDA REDDY
W.P. No. 13448 of 2006**

ORDER: (Per Hon'ble Mr. Justice S. Ananda Reddy)

This writ petition is filed by the Rajamahendri Outdoor Advertisers Association, Rajahmundry, represented by its President, seeking writ of certiorari calling for the records of the 1st respondent pertaining to his notification No. 57/2006, dated 12.5.2006 issued in ROC No. 7591/2005-G3, dated 10.5.2006 enhancing the advertisement tax by 30% beyond the maximum rates provided in G.O.Ms.No.487, Municipal Administration, dated 20.09.2000 and

quash the same holding that it is illegal, arbitrary, unjust, ultravires and beyond the statutory competence apart from being opposed to the principles of natural justice; and consequently direct the respondents not to collect the enhanced tax imposed by the 1st respondent Corporation.

2. It is stated that the petitioner association is a registered body, having its members, who are carrying on the business in advertisements. The writ petition is filed assailing the action of the 1st respondent in enhancing the advertisement tax by 30% from the existing rate. According to the petitioner, Rajahmundry was made Municipal Corporation under the provisions of the A.P. Municipal Corporations Act, 1994, (hereinafter referred to 'the Act'), which adopts the provisions of the Hyderabad Municipal Corporation Act, 1955. It is stated that by virtue of Sec.13 of the Act, all Notifications, Rules and Regulations, which were issued under the provisions of the Municipalities Act, 1965, which were in force on the commencement of the Act, so far as they are inconsistent with the provisions of the Act shall continue. Thus, according to the petitioner, wherever the new Act does not provide for any Rules, under the provisions of the Corporation Act or Rules, the Rules that were in vogue prior to the conversion of the Rajahmundry Municipality into Rajahmundry Corporation are deemed to be in force. It is further stated that exercising the powers under the Municipalities Act, 1965, the Government issued G.O.Ms.No. 487, dated 20.09.2000 prescribing the maximum and minimum rates that could be levied on the advertisements. But contrary to the maximum rate prescribed under the said G.O., the Corporation has increased the tax by 30%, over and above the maximum rates prescribed therein. Therefore, the proposed action of the Respondent No.1 is illegal and unsustainable. It is also contended that a notice was published in the local newspaper proposing to enhance the advertisement tax calling for objections. However, only seven days time was provided, though a larger time is provided under the Act and the Rules. Therefore, even on the ground of not giving sufficient opportunity to the Members of the petitioner association, the action of the Respondent No.1 is liable to be quashed. It is further stated that as per G.O.Ms.No. 487 if any Corporation or the Municipality intends to increase the tax beyond the prescribed amount or rate it is only the Government, which has to issue orders, and the Corporation by itself is not empowered to

enhance and collect the advertisement tax at the enhanced rate. Therefore, the petitioner sought for quashing of the impugned Notification issued by the 1st respondent enhancing the advertisement tax by 30%.

3. As counter was not filed within the time prescribed by this Court, this Court denied the benefit of filing counter by the 1st respondent. However, at the time of hearing, a copy of the counter is placed before this Court explaining that though Para-wise remarks were sent to the Standing Counsel, counter could not be filed within the time, as the Commissioner of the Respondent No.1 Corporation was busy with other urgent works. However, a perusal of the counter shows that the Corporation is empowered to levy tax under Sec.197 and 198 and in the light of the specific provisions contained in the Hyderabad Municipal Corporation Act, empowering the Corporation to levy advertisement tax, the Rules that were framed under the Act have no application. It is stated that a resolution was passed by the Municipal Council and further paper publication was issued inviting objections. As against the said notice, only two objections were received and they were considered and rejected, and thereafter gazette notification was issued approving the enhancement of the advertisement tax by 30%. In view of the specific powers contained under the provisions of the HMC Act, the contention of the petitioner that it is only the Rules framed under G.O.Ms.No. 487 is clearly devoid of merit.

4. From the above rival contentions, the issue to be considered is whether the Corporation has got the power to enhance the advertisement tax?

5. A perusal of Section 197 shows that the said provision empowers the Municipal Corporation to impose taxes apart from the taxes on the lands and the buildings, octroi, taxes on vehicles, taxes on advertisements other than the advertisements published in the newspapers. Section 198 provides for issuing notice before either levy of the tax for the first time or new rates are proposed and the notice shall be published in the gazette as well as in the local newspapers of its intention to do so fixing reasonable period of not being less than one month from the date of publication. The Corporation may after considering the objections if any received within the period specified, determine by resolution to levy tax. Such

resolution shall specify the rate at which, the date from which and the period of levy, if any, for such tax shall be levied. When the provisions are very clear empowering the Corporation to levy tax as well as the procedure to be followed as to the mode of levy of tax or enhancement of tax, there is no need for the Corporation either to rely upon any of the provisions of the A.P. Municipal Corporation Act, 1994 or any Rules that were framed under the Municipalities Act prior there to. In fact, a perusal of the provisions of the A.P. Municipal Corporation Act 1994 shows that the said Act was enacted in order to empower the Government to take appropriate action for notifying the larger urban area, called 'the Corporation', specifying the said area and when once a Notification is issued with reference to the specified larger urban area declaring it as a Corporation, and further by virtue of the adoption of the provisions of the Hyderabad Municipal Corporation Act by the said Act, those provisions are applicable to all the Corporations that were formed or constituted. Sec.13 is only a transitional provision where there is no specific provision under the Hyderabad Municipal Corporation Act, which was adopted for the newly formed Corporation, the Rules that were framed under the Municipalities Act, 1965, which were in vogue, they would continue to be applicable till they are replaced by a suitable provision. According to the learned counsel for the petitioner, the Rules were framed under the Municipalities Act, 1965 with reference to the advertisement tax by the Government by issuing G.O.Ms.No. 487 fixing specific rates as minimum as well as maximum to different classes of Municipalities, as no specific rules are framed under the A.P. Municipal Corporation Act, the same rules are applicable, and therefore, if the rates are to be enhanced beyond the rates that are fixed by the Government in G.O.Ms.No. 487, it is only the Government, which has the power and not the Corporation. As no such Notification was issued by the Government permitting the enhancement of advertisement tax by 30%, the action of the Respondent No.1 is illegal and without jurisdiction. But the said contention is clearly devoid of merit, since there is a specific provision in the HMC Act itself, viz., Sections 197 and 198. The said provisions provide for levy of tax as well as mode to be adopted while either for levying or enhancing the tax. Therefore, the contention of the petitioner that the Respondent Corporation has no power to enhance the advertisement tax by 30% is clearly devoid of merit.

6. Coming to the issue of violation of principles of natural justice, the Corporation published the notice inviting objections. It is not the case of the petitioners or its Members that because of the shorter period fixed they were not able to file any objections. In fact, the remain attack is for want of power and not on any other ground. In fact, in response to the notice published inviting objections, only two objections are received by the Corporation and they were considered and rejected. Further, though the said notice was issued as early as in the month of February 2006, the members of the petitioner association did not file any objections and did not even approach this Court, and it is only after four months when the final notification was issued and even long thereafter, have come up with the present writ petition.

7. Under the above circumstances, we do not find that there are any justifiable grounds warranting interference with the impugned action of the Respondent No.1 in enhancing the advertisement tax. As already observed the Respondent Corporation is well within its powers in its action of enhancement of the property tax and it also complied with the procedure contemplated under Sections 197 and 198 of the HMC Act. Therefore, the writ petition is devoid of merit.

8. Accordingly, the writ petition is dismissed. No costs.

Bilal Nazki, J

S.Ananda Reddy, J.

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W.P. No. 13448 of 2006

ORDER

(Per Hon'ble Mr. Justice S. Ananda Reddy)

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